

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ARLENA OLAGUE,

Plaintiff and Respondent,

v.

UNITED CARE FACILITIES,  
LLC,

Defendant and Appellant.

B323075

(Los Angeles County  
Super. Ct. No.  
21STCV29023)

APPEAL from an order of the Superior Court of the County of Los Angeles, William F. Highberger, Judge. Affirmed.

Action Legal Team, Michael N. Sofris, for Defendant and Appellant.

Stiller Law Firm, Ari J. Stiller and Ariel J. Stiller-Shulman; Haines Law Group, Paul K. Haines; Sani Law, Sam Sani, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant United Care Facilities appeals from an order denying its petition to compel arbitration of a dispute with a former employee, plaintiff Arlena Olague. We affirm based on the inadequacy of the record.

## II. BACKGROUND<sup>1</sup>

Defendant employed plaintiff as a nurse for approximately 10 months. On October 21, 2019, before beginning her employment, and as part of a standard employment package, she signed a contract which included an arbitration clause. The package also included a “Binding Arbitration Agreement Rejecting Form” (opt-out form). After working for defendant less than a year, plaintiff stopped coming to work from and after August 23, 2020.

On August 3, 2021, plaintiff delivered a copy of the opt-out form to defendant. On August 6, 2021, plaintiff filed a class action complaint against defendant for wage violations. On October 12, 2021, she filed the first amended, and operative, complaint.

On May 20, 2022, defendant filed a petition to compel arbitration and dismiss plaintiff’s complaint, arguing, among

---

<sup>1</sup> We state the facts “in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.” (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

other things, that: (1) plaintiff's opt-out form was not executed in a timely manner as it was delivered almost a year after her employment terminated; and (2) the ordinary meaning of the language of the opt-out form suggested that it must be signed when employment commenced, or within a reasonable time thereafter.

Plaintiff opposed the petition, arguing that: (1) the opt-out form provided the right to revoke arbitration and did not include any deadline by which to exercise that right; (2) the usual and ordinary meaning of the opt-out provision was that plaintiff had an "unconditional right to opt-out of the Arbitration Agreement by signing the [opt-out form];" and (3) the employment package supported her interpretation because the opt-out form was separate from the arbitration agreement itself, and there were two date blocks on the form—one for the date that the form was signed and a second for the date the form became "effective."

In a July 21, 2022, minute order, the trial court denied the defendant's petition without providing an explanation of the factual or legal basis for its decision.<sup>2</sup> On August 30, 2022, defendant timely filed a notice of appeal from the court's order

---

<sup>2</sup> The July 21, 2022, minute order, after reciting that the nature of the proceedings was a hearing on the motion to compel, stated, in full: "The matter is called for hearing without a court reporter. [¶] The above-entitled motion is heard and argued. The Defendant's Notice of Petition and Petition to Compel Arbitration and to Dismiss Complaint or Stay PAGA Claim [CCP § 1282.2] filed by Arlena Olague on 05/20/2022 is Denied. The Stay on discovery will remain in effect. [¶] Further Status Conference is scheduled for 10/04/22 at 11:00 AM in Department 10 at Spring Street Courthouse. Joint Status Report is due on 09/27/22. [¶] Notice is waived."

denying the petition to compel arbitration and elected to proceed without a reporter's transcript.

### III. DISCUSSION

#### A. *Standard of Review*

“There is no uniform standard of review for evaluating an order denying a motion to compel arbitration.” (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.) If the trial court's opinion rests upon a decision of fact, the reviewing court employs a substantial evidence standard. (*Ibid.*) If, however, the court's denial relies upon a decision of law, the reviewing court adopts a de novo standard of review. (*Ibid.*)

#### B. *Inadequate Record on Appeal*

“A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) An appellant must affirmatively establish error by an adequate record. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609.) In the absence of a proper record on appeal, the appealable judgment or order is presumed correct and must be affirmed. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.)

Defendant contends that the trial court erred by finding, “in substance,” that the arbitration agreement permitted plaintiff to withdraw from the arbitration at any time. The record,

however, does not include any grounds for the court's ruling: the minute order does not include an explanation for the ruling and there is no reporter's transcript of the proceedings or a suitable substitute. (See Cal. Rules of Court, rule 8.120(b).)

According to defendant, it has provided an adequate record for review because: (1) on appeal, we review the arbitration agreement de novo; and (2) "no factual presentation of evidence was made at the hearing held on July 21, 2022 . . . ." Alternatively, defendant moves to supplement the record with a declaration by counsel of the proceedings on appeal. We reject defendant's arguments.

Defendant's contention on appeal is premised on its assertion that the trial court denied the motion to compel based on the court's interpretation of the opt-out form. But without a record of the proceedings, we cannot discern the basis, whether factual or legal, for the court's order. Moreover, we decline to accept defendant's assertion, again unsupported by the record, that "no factual presentation of evidence was made" at the hearing. Finally, we reject defendant's request to supplement the record with counsel's declaration about the proceedings in the court as such a unilateral declaration is not a suitable substitute for a transcript of the proceedings under California Rules of Court, rule 8.137. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 405 [authority of courts of appeal to make findings of fact on appeal should be exercised sparingly].) Accordingly, we affirm the court's denial of the motion on the grounds that defendant has failed to establish error by an adequate record.

#### **IV. DISPOSITION**

The order denying the petition to compel arbitration is affirmed. Plaintiff is awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.